



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,715	05/17/2005	Jens Birger Nilsson	66352-035-7	8394

25269 7590 11/21/2008

DYKEMA GOSSETT PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON, DC 20005

EXAMINER

GODENSCHWAGER, PETER F

ART UNIT	PAPER NUMBER
----------	--------------

1796

MAIL DATE	DELIVERY MODE
-----------	---------------

11/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed October 20, 2008 have been fully considered but they are not persuasive.

Applicant argues that Mevel (US Pat. No. 3,274,105) necessitates the use of a composition with an alkali pH ($\text{pH} > 7.0$) and specifically between 7.5 and 8.5. However, as set forth in the rejection of claim 28 in the Office Action mailed August 28, 2008, Mevel does not necessitate the use of an alkali pH, only a pH of at least 7.0, with 7.0 being neutral. While Mevel may teach a preferred embodiment where the pH ranges from 7.5-8.5, a reference must be considered for all that it discloses and must not be limited to preferred embodiments (see MPEP 2123). In fact, Mevel gives motivation for using a more neutral pH in order to reduce the corrosiveness of the composition (1:51-60). The risk of precipitation mentioned by Mevel (1:60-67) does not support limiting the pH of Mevel's composition to between 7.5-8.5 as Mevel explicitly states that it is the concentration of added potassium alkali, not the pH itself that causes the precipitation. With regards to potassium acetate, one cannot look only at the pKa of a specific compound as representative of the composition as a whole.

Applicant argues that Mevel teaches that below the specified pH range of 7.5-8.5 the ability of Mevel's solution to extinguish fires is significantly compromised. However, it is not clear from where in the disclosure of Mevel such a factual conclusion is being drawn. Again, a reference must be considered for all that it discloses and must not be limited to preferred embodiments (see MPEP 2123), and as set forth in the rejection of claim 28 in the Office Action mailed August 28, 2008, Mevel does not necessitate the use of an alkali pH, only a pH of at least 7.0, with 7.0 being neutral.

Art Unit: 1796

Applicant argues that it would not be obvious to one of ordinary skill in the art to change the amount of acidic concentrate used. However, one of ordinary skill in the art would have been motivated to do so to control the pH of the solution which Mevel teaches is important to minimize the corrosiveness of the solution (1:51-60).

Applicant argues that the combination of citric acid and acetic acid further enhances the extinguishing abilities of the fire retardant and serves as a stabilizer. However, while secondary considerations may be persuasive in rebutting the combination of references, a showing of unexpected results must be based on evidence, not argument or speculation (see MPEP 2145).

Applicant argues that in the present invention, the alkali concentrate is specific with relation to the other components within the mixture. However, it is not clear how this is argument rebuts the rejection that one of ordinary skill in the art would be motivated to optimize the weight percent of alkali in solution.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

/P. F. G./
Examiner, Art Unit 1796
November 10, 2008